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TRANSFERRING POLICE PERSONNEL: SOME LEGAL ISSUES

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## **ABSTRACT**

The transfer of police personnel is an important issue to both management and employees: management needs to be able to transfer employees to meet the needs of the organization; employees want to be treated fairly and honestly when being transferred. Sometimes, however, officers have their benefits or working conditions changed because of transfers.

Written policies need to give an administrator the authority to transfer, but should also detail the reasons why transfers are made. Policies may create property interest rights for employees if they prohibit disciplinary transfers but are transferred for disciplinary reasons anyway.

The Texas Whistleblower Act, property interest rights, political association rights, and freedom of speech rights are all potential challenges employees may allege if they feel their employer has infringed upon their rights in these areas.

Property interest rights involve the expectation of certain benefits, such as pay or other privileges. Whistleblower protection exists if the employee reports a violation of the law committed by his employer to an appropriate law enforcement authority. Employees may not be transferred in retaliation of their freedom of political association or freedom of speech rights unless the employer can show the employee's speech or association interfered with the effective operations of the agency or the public's need for efficient services. Police managers must be aware of these issues to ensure transfers can withstand potential legal challenge.

## **I. Introduction**

The intent of this research is to identify various policy level issues concerning the authority of police administrators to transfer employees from one assignment to another. There are still some agencies whose rules and procedures manuals are not written to withstand legal scrutiny. In addition, some administrators still use their authority to make uninformed personnel actions against employees, creating unnecessary administrative and legal problems. The focus of this paper is to provide all police personnel, particularly managers, with brief but relevant case information about potential legal issues regarding transfers.

In most situations, administrators have authority to transfer officers from one assignment to another in order to meet the department's needs. Legal history has shown that some police administrators have been too hasty in their privilege to transfer, infringing on some officers' rights.

The importance of a transfer cannot be overemphasized. To administrators, a transfer is a vital management tool which can ensure the accomplishment of their organizational goals. On the other hand, it is important to the affected employees that they be treated fairly and honestly in all personnel matters. Transfers are therefore one of the most sensitive personnel issues because of their potential impact on employees' job satisfaction and benefits. They are also important to administrators because, if wisely performed, can help determine his/her success.

## II. Review of Literature and Practice

The scope of this paper focuses on management's authority to transfer an employee, not on the methods or procedures used in employee selection. The written authority to transfer personnel is readily found in most police manuals. Some managers may only want a one sentence policy so management rights are not restricted. Other administrators may opt to have more detailed rules so employees know when they may be transferred. In this section, discussion will focus on some policy issues concerning transfers: rules authorizing transfers, grievance procedures, and disciplinary transfers. To this writer's knowledge, there has not been any other independent research on this particular topic.

Waco Police General Order 43.03, 1.c. (2) states: " All employees are subject to being transferred between divisions according to the needs and best interests of the Department" (**Waco Police Department**). A similar rule is found in Houston Police Department's General Order 300.02, Special Provisions: "At the discretion of the Chief of Police any personnel assignments deemed necessary for the proper management of the department may be processed without regard to the other provisions of this General Order" (**Houston Police Department**). Some officers feel that broad rules such as these give the chief too much discretion and allow him to use this rule to transfer employees without just cause.

An example of a policy which more fully describes some reasons for transfer is found in Section 13.2 (1) of the Puerto Rico Police Department's Regulations which reads, in part:

"a) Transfers can be effected....in response to needs of the public service in situations such as the following:

- 1) When the need arises for additional human resources in an agency to take care of new functions or programs or for the enlargement of the programs it develops.
- 2) When the services of an employee are necessary in another work unit, to solve a problem or better a service.
- 3) When functions or programs are eliminated due to a reorganization in the Puerto Rico Police or in the Government, or when in the process of reduction in force reassigning employees becomes a necessity.
- 4) When it is found that the services of an employee can be utilized more fruitfully in another dependency of the Puerto Rico Police or in another agency of Government due to the employee's knowledge, experience, skills or special qualifications, specially in cases where he has acquired more knowledge and developed more expertise as a result of training.
- 5) When the need arises to rotate the personnel of the Puerto Rico Police so they can be trained in other areas" **(Puerto Rico Police Department)**.

Years ago, it was uncommon for police agencies to have written grievance policies. One reason police managers didn't want these policies was because they wanted to run their agencies with complete autonomy. On the other hand, grievance procedures were important for employees so they could appeal unfair personnel decisions. Grievance procedures are also important because they give employees a way to appeal disciplinary or punitive transfers.

Some agencies have adopted rules prohibiting disciplinary or punitive transfers. These rules sometimes create property interests in employees' jobs. A property interest is nothing more than a right to receive certain benefits. Courts have generally

held that employers must give employees a due process hearing (a chance to be heard) before taking benefits away from them. Even though an agency may have a rule prohibiting disciplinary or punitive transfers, an administrator may still transfer the employee in this manner provided the employee is given a chance to present his/her reasons against the reassignment. In such situations, the employee may be entitled to a due process hearing (discussed again later). Property interest rights are also involved whenever the transfer results in a reduction of an employee's base salary. Many police managers are now aware, due to legal decisions or civil service laws, that they cannot transfer or demote employees when such action results in a loss of benefits.

### **III. Legal Context**

This section focuses almost exclusively on transfers from a legal perspective. It will briefly describe a number of cases which have recently confronted police managers on transfer challenges involving property interest and First Amendment rights.

The first case involves a sergeant in the Pennsylvania Highway Patrol who was transferred because of his verbal comments criticizing a ticket quota system at his station. David Ruhlman alleged he was punitively transferred because of his comments. The court ruled because this agency had a rule prohibiting punitive transfers, Ruhlman was entitled to a grievance or due process hearing so he could present his arguments (**Ruhlman v. Barger**).

The next case involves a majority of officers in the Chicago

Police Department who felt they were being subject to a host of unfair personnel decisions. They sued in court and asked that the department provide them with collective bargaining or with a grievance procedure so they could challenge various personnel decisions. The court ruled for the city because there was no law granting the officers a property interest in actions less than discharge (**Confederation of Police v. City of Chicago**).

The next case involves Deputy Robert White who was demoted from corporal to deputy and reassigned, receiving a 5% salary reduction. The court made some interesting observations regarding punitive transfers. It ruled personnel actions such as "dismissal, demotion, suspension, reduction in salary and written reprimand, by definition, result in disadvantage, loss or hardship". These types of actions were considered penalties no matter why they were imposed. The court ruled that a transfer is disciplinary in nature only if it were imposed "for purposes of punishment". The court held the deputy should have been given a due process hearing since he received a reduction in his base salary (**White v. County of Sacramento**).

Personnel actions classified as demotions also involve property interest rights. Readers interested in demotions should also read the following cases: *Boussom v. City of Elkhart*, 567 F. Supp. 1382 (1983); *Auriemma v. City of Chicago*, 601 F. Supp. 1080 (1984); and *Bennis v. Gable*, 604 F. Supp. 244 (1984).

The next case involves Officer R. D. Alford, who applied to transfer into the Helicopter Unit at the Dallas Police Department.



Officer Alford, who was not chosen, claimed his property interests, liberty interests and employment contract with the city had been violated because the department had not followed its own transfer rules. The court noted "A state agency's failure to follow its own procedural rules governing employment will not create a property interest which otherwise does not exist". The court also noted that "an individual does not have a property interest in the rules themselves or in his or her state employer's observance of rules. Rather, a property interest protected by procedural due process arises where an individual has a legitimate claim of entitlement that is created, supported, or secured by rules or mutually explicit understandings". The court ruled employees could not expect to have a property interest right every time employers did not follow its own rules (**Alford v. City of Dallas**).

The next case involves William Hughes, a member of the Missouri Highway Patrol. Trooper Hughes became embroiled in a dispute with his supervisor and was ultimately transferred two hundred miles away to another station. The court ruled in favor of the agency because Hughes had no property interest right in his particular geographic assignment (**Hughes v. Whitmer**).

The next case involves transit officer Geraldine Prudhomme of the New Orleans Police Department. She was reassigned from the transit unit and received a \$189.12 loss of weekly supplemental salary. The court ruled for the city because her base pay was unaffected by the transfer (**Prudhomme v. Department of Police**).

This next case involves the transfer of one hundred forty four

officers in the Puerto Rico Police Department. The officers alleged the new superintendent transferred them because of their political ties to the New Progressive Party (NPP). The court disagreed, finding there was no evidence to show they were transferred due to their political associations (**Gonzalez Vega v. Hernandez Colon**).

Another political case involves two deputies who announced their candidacy to run against their sheriff. Both were transferred to jail duties, but did not receive salary reductions. The deputies, however, perceived the transfers as demotions.

The court relied on another case, *Mt. Healthy City School Dist. Bd. of Education v. Doyle*, in which the Supreme Court set guidelines to be used when analyzing whether a transfer was or was not retaliatory. To prevail in court, the transferred employee had to 1) show that his conduct was protected by the First Amendment and 2) show the conduct on the part of the employee was the "substantial" or "motivating" factor for the employer's actions. If the employee was able to show this, then the responsibility shifted back to the employer to show a legitimate reason why the employer would have taken the same employment action.

These deputies presented sufficient evidence to show they were transferred because of their political beliefs so the court sent the case back for further action (**Click v. Copeland**).

A similar case involves the transfer of a lieutenant in the Bexar County Sheriff's Office from commander of the narcotics unit to the communications unit. This lieutenant, who was a

policymaker, alleged he was transferred because he campaigned for the previous sheriff. The new sheriff claimed he transferred him because of deficient job performance. The court ruled in favor of the deputy because the sheriff was unable to show that the deputy's conduct interfered with the agency's operations or ability to provide efficient public services (**Vojvodich v. Lopez**).

This case involves seven deputies whose employment contracts were not renewed when a new sheriff took office. The court held the sheriff could not take any adverse personnel action against his employees because of the employees' support of a rival candidate unless the employees' actions had affected the efficiency of departmental operations. Readers should note that this case will return to the United States Fifth Circuit Court of Appeals for an en banc hearing (**Brady v. Fort Bend County**).

The next case involves Captain J. R. Bryson of the Waycross, Georgia Police Department. Bryson filed a series of complaints against the Chief of Police and was transferred to a less desirable position in the department. After his transfer, Bryson continued to openly investigate the chief, disrupting the department's operations. The court ruled that the captain's right to free speech was outweighed by the public's need to expect efficient operations in the police department (**Bryson v. City of Waycross**).

The following case involves Captain Larry Watts with the District of Columbia Fire Department. Captain Watts filed a protest with his chief alleging the chief's special order prohibiting the public display of a controversial political cartoon

was unnecessary censorship. Because of his protest, Captain Watts was transferred to a "non-command, make work position in the Department's Property Section". He was also told to submit to a psychiatric evaluation and was told he was ineligible to work overtime. The court found Watts was punitively reassigned in violation of his First Amendment rights (**Watts v. Alfred**).

This last case involves David Green, a major in the City of Montgomery, Alabama Police Department. This case was very complex and had a multitude of plaintiffs. Green alleged his request to transfer to a detective commander's position was denied because of his First Amendment activities. The court ruled in favor of the city on this allegation because they felt his transfer denial was based on professional judgement and not based on his speech related activities (**Green v. City of Montgomery**).

### **III. Discussion of Relevant Issues**

The main areas of potential challenge concerning transfers are development of written policy, the Whistleblower Act, property interest and First Amendment claims. In one of the major legal decisions affecting public agencies' policy development, *Pickering v. Board of Education* stands as the primary case guiding departments' desires to regulate the conduct and speech of its employees. Factors to be considered are:

- 1) "The importance of the subject commented on to the political and social affairs of the community.
- 2) The employer's need for confidentiality with respect to the matters disclosed.

- 3) Whether the speech was critical of an immediate supervisor or other with whom he is required to work in close daily association and thus, likely to impair harmonious working relationships.
- 4) Whether the speech undermined the rank and file confidence in the department's leadership, creating morale problems or internal controversy.
- 5) Whether the speech impaired the employee's own job effectiveness or the department's efficient operation" (**Pickering v. Board of Education**).

Managers may consider using part of a regulation found in the New Orleans General Orders as a beginning phrase in their orders to regulate conduct: "Employees shall not publicly criticize or ridicule the department, its policies or other employees by speech, writing or other expression where such speech, writing or other expression tends to ...." (**New Orleans Police Department**). Remember, to enforce these regulations, the conduct by the employee must have a real, not imagined impact on the agency's operations.

Some managers are reluctant to transfer employees in conjunction with disciplinary action taken against the employees. Disciplinary transfers, however, occur only if the transfer was imposed "for purposes of punishment". Managers can therefore transfer disciplined employees for other legitimate reasons: inability to perform his job duties; conflicts or damaged working relationships with co-workers or supervisors, etc. Managers could consider allowing employees to write a due process letter in situations where the employee feels he was unfairly transferred even though there may be a disciplinary or punitive transfer rule in place. Despite other policy changes, managers still need a phrase in policy allowing them to transfer employees at their

discretion.

The Texas Whistleblower Act also provides protection to an employee who reports illegal activity committed by his employer to an appropriate law enforcement authority. The act also defines a personnel action to include any action that affects "a public employee's compensation, promotion, demotion, transfer, work assignment, or performance evaluation". It is important for managers to be very cautious when transferring an employee in this type of situation unless the employer already planned to perform the transfer for other reasons (TMPA Quarterly, Fall 1995).

Property interest claims, which can form another basis for challenging transfers, are just certain benefits as a result of employment. There are six common ways property interests can be created: 1) a collective bargaining agreement; 2) provisions in the city ordinances or city charter; 3) the operations manual can procedurally protect against unjust disciplinary actions; 4) civil service rules; 5) state or federal statutes; or 6) by oral comments or promises of an employer (Aitchison, pp. 96-97).

The last area which could affect a transfer is if the employee alleges he or she was transferred because of their First Amendment rights. The rights can be either freedom of speech or freedom of political association. In these situations, the employer must decide how much they want to regulate the speech or conduct of their employees. The employer or government can regulate this conduct only if the public's need for efficient services outweigh the employee's right to exercise his freedom of speech. In the

end, the implementation of these policy changes would cost little except for further legal research and printing costs.

#### IV. Conclusion

The purpose of this research is to identify legal issues concerning intradepartmental transfers. The goal is to provide accurate and timely legal information to officers and administrators so they can make informed decisions concerning personnel transfers. Police transfers have been and will continue to be an important personnel issue to both officers and management. Since some administrators haven't learned from other's mistakes, legal decisions governing this topic will continue to change.

There are several problems inherent with the implementation of police transfers. Administrators must first ensure that their agencies' policies are written to minimize administrative and legal challenges. Second, some administrators are still using their authority and power to punish employees by making unwise transfer decisions. Third, Police managers should develop a transfer policy they are comfortable with, combining some of the guidelines from the Puerto Rico Police Department's regulations with the guidelines found in the *Pickering* case.

After reviewing this legal information and having well written policies in place, managers should reduce the number of administrative and legal problems associated with the transfer of personnel. Finally, any conclusions in this paper should be reviewed by an agency's legal counsel before policy changes are made.

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